

**REMARKS**

The Office Action dated July 12, 2007 has been carefully considered. Claims 10-16, 20, 26, 34-35 and 42 are amended. Claims 99 and 100 are new. No new subject matter has been entered. New claims 99 and 100 are supported by original claims 2 and 41.

Claims 2 and 41 were merely objected to as dependent upon a rejected base claim but would be allowable if rewritten in independent form. It is believed that the base claim is now in allowable form, however the claims were rewritten in independent form and renumbered as claims 99 and 100. Therefore, it is believed that new claims 99 and 100 are allowable.

The amendment to the specification at paragraph [0019] beginning at page 4 is supported by original claim 43. The amendment to the specification at paragraph [0130] at page 24 is supported by original claim 48. These changes respond to the objections to the specification.

On November 6, 2007, the Examiner discussed the pending rejections in a phone interview with inventor Bonnie Bassler and Applicant's Representative. It was agreed that the rejection based on new matter was successfully rebutted, as discussed below. Also discussed were what actions are suitable responses to the rejections under the enablement and novelty statutes.

**35 U.S.C. § 112**

Claims 10-18, 22, 27-30, 42, 45-46 and 48 were rejected under 35 U.S.C. 112, first paragraph as failing to comply with the written description requirement. The Examiner stated that the term "non-homoserine lactone" introduced new matter. Applicant traverses the rejection.

The term "non-homoserine lactone" in the claims is supported in the originally filed specification at page 75, paragraph 284.

Claims 26, 34 and 35 were rejected under 35 U.S.C. 112, first paragraph as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains to make and or use the invention. Applicant traverses the rejection.

The Examiner stated that strains BB170 and MM32, appearing in claims 26, 34, and 35 do not appear to be readily available to the public, nor does the process for generating them appear to be repeatable. Without acquiescing to the Examiner's assertion about the repeatability of the process for generating the strains, Applicant reports that the strains are available to the

public since they are deposited in the ATCC with unrestricted access. The claims have been amended to reflect the ATCC number. It is believed this moots the rejection.

Claim 20 was rejected under 35 U.S.C. 112, first paragraph as being indefinite for use of the term “distinct”. The claim is amended to delete the term “distinct.” The claim is definite.

### **35 U.S.C. § 102**

Claims 1, 3-36, 39-40, and 42-47 were rejected under 35 USC 102(e) as being anticipated by US 6,720,415.

The applied reference, US 6,720,415, has two inventors. Both the inventors are also co-inventors of the present application. Therefore, US 6,720,415, applied as anticipating certain claims of the present invention, is not the invention “by another” as to those claims. A Declaration provided under 37 CFR 1.132 is submitted herewith in support of this argument.

Applicant respectfully requests that the rejection be withdrawn.

### **DOUBLE PATENTING**

Claim 1 was rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,559,176 (‘176). Applicant traverses the grounds for the rejection.

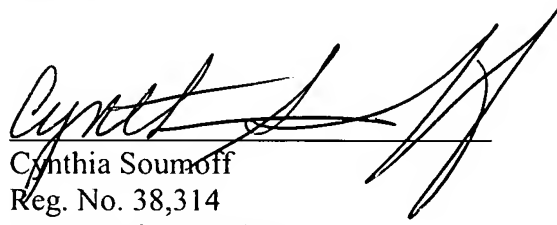
The instant application is a divisional of U.S. patent application Ser. No. 10/300,818, filed Nov. 19, 2002, which is a divisional of U.S. patent application Ser. No. 09/853,832, filed May 10, 2001, which issued as the ‘176 patent. Since the claims as filed in this application were restricted from the ‘176 patent, the patent cannot be held against this application.

Claim 10 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,936,435 (‘435). A statement concerning a Terminal Disclaimer was made in the Amendment of August 4, 2006.

In view of the foregoing, Applicants submit that all pending claims are in condition for allowance and request that all claims be allowed. The Examiner is invited to contact the undersigned should he believe that this would expedite prosecution of this application. It is believed that no fee is required. The Commissioner is authorized to charge any deficiency or credit any overpayment to Deposit Account No. 13-2165.

Respectfully submitted,

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